

# Exhibit C

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18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 ABANTE ROOTER AND PLUMBING, INC, a Case No: 3:19-cv-05711  
21 California corporation, individually and on  
22 behalf of all others similarly situated,

23 **DEFENDANT'S SUPPLEMENTAL  
RESPONSES AND OBJECTIONS TO  
PLAINTIFF'S FIRST SET OF REQUESTS  
FOR PRODUCTION**

24 Plaintiff,

25 vs.

26 TOTAL MERCHANT SERVICES, LLC., a  
27 Delaware limited liability company,

Date Action Filed: September 11, 2019

28 Defendant.

Defendant, TOTAL MERCHANT SERVICES, LLC (“Defendant” or “TMS”), by and through undersigned counsel, hereby serves its supplemental responses and objections to the First Set of Requests for Production (“Requests”) dated December 23, 2019, and served by Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”), and states as follows:

29 **PRELIMINARY STATEMENT**

The following supplemental responses and objections to the Requests (the “Responses”) are made solely for the purpose of this action. TMS has not completed its investigation of the facts

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31 DEFENDANT'S SUPPLEMENTAL RESPONSES AND OBJECTIONS TO FIRST SET OF  
32 REQUESTS FOR PRODUCTION

1     **REQUEST NO. 3:** All Documents sufficient to Identify all Persons who You (or a third-party  
 2 acting on Your behalf or for Your benefit) caused to be called on their cellphones, for the same  
 3 purpose Plaintiff was called, using the same Dialing Equipment that was used to call the Plaintiff,  
 4 where the Lead Information regarding such person was obtained through the same source through  
 5 which Plaintiff's phone number and/or consent to call Plaintiff was obtained.

6     **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 7 did not place the alleged telephone calls to Plaintiff at issue in the Complaint. Plaintiff does not  
 8 allege but merely advises TMS of Plaintiff's belief that a non-party named Triumph placed the  
 9 alleged telephone calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS. As  
 10 such, TMS attempted to contact Triumph to seek to ascertain whether Triumph placed the alleged  
 11 telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and  
 12 documentation surrounding such alleged telephone calls. Triumph has not responded to TMS.  
 13 Accordingly, TMS is not in possession of documents that may be responsive to this Request at this  
 14 time.

15         The objections that apply to this continue as follows:

16         TMS objects to this Request as argumentative to the extent the Request purports to assume  
 17 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to  
 18 the extent it calls for a legal conclusion and speculation. TMS further objects to the phrase  
 19 "sufficient to Identify" as vague and ambiguous. TMS further objects to this Request and its  
 20 inclusion of "All Documents" as overly broad and unduly burdensome on its face. TMS further  
 21 objects to the respective definitions of the terms "Dialing Equipment" and "You" as set forth in  
 22 General Objections B & C, *supra*. TMS further objects to the capitalized term "Lead Information"  
 23 as vague and ambiguous, particularly where, as here, the capitalized term is not defined by the  
 24 Requests. Instead, TMS interprets "Lead Information" to mean "contact information" in a good  
 25 faith attempt to respond to this Request.

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DEFENDANT'S SUPPLEMENTAL RESPONSES AND OBJECTIONS TO FIRST SET OF  
 REQUESTS FOR PRODUCTION

1     **REQUEST NO. 4:** For all Persons Identified in Documents produced in Your response to Request  
 2 to Produce No. 3 above, all Documents sufficient to Identify the number of times You caused (or  
 3 a third-party acting on Your behalf or for Your benefit caused) each such Person to be called,  
 4 including the dates and times of all such calls.

5     **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 6 did not identify any Persons in response to Request No. 3. Accordingly, TMS is not in possession  
 7 of documents that may be responsive to this Request at this time.

8                 The objections that apply to this Request continue as follows:

9                 TMS objects to this Request to the extent it calls for a legal conclusion and speculation.  
 10 TMS further objects to the phrase “sufficient to Identify” as vague and ambiguous. TMS further  
   11 objects to this Request and its inclusion of “all Documents” as overly broad and unduly  
   12 burdensome on its face. TMS further objects to the definition of the term “You” as set forth in  
   13 General Objection C, *supra*.

14

15     **REQUEST NO. 5:** All Documents sufficient to Identify Your complete contract or other  
 16 arrangement or agreement with any third party from whom You obtained Plaintiff’s phone number  
 17 or consent to call Plaintiff or who called Plaintiff on Your behalf, for Your benefit, or under any  
 18 contract or agreement with You.

19     **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 20 did not place the alleged telephone calls to Plaintiff at issue in the Complaint. Plaintiff does not  
 21 allege but merely advises TMS of Plaintiff’s belief that a non-party named Triumph placed the  
 22 alleged telephone calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS. As  
 23 such, TMS contacted Triumph in an attempt to ascertain whether Triumph placed the alleged  
 24 telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and  
 25 documents surrounding such alleged telephone calls. Without conceding or otherwise admitting  
 26 the propriety of Plaintiff’s unalleged belief, TMS will produce any contracts between TMS and  
 27 Triumph that are in TMS’ possession.

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DEFENDANT’S SUPPLEMENTAL RESPONSES AND OBJECTIONS TO FIRST SET OF  
 REQUESTS FOR PRODUCTION

1           The objections that apply to this continue as follows:

2           TMS objects to this Request as argumentative to the extent the Request purports to assume  
 3 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to  
 4 the extent it calls for a legal conclusion and speculation. TMS further objects to the phrase  
 5 “sufficient to Identify” as vague and ambiguous. TMS further objects to this Request and its  
 6 inclusion of “all Documents” as overly broad and unduly burdensome on its face. TMS further  
 7 objects to the definition of the term “You” as set forth in General Objection C, *supra*.

8

9 **REQUEST NO. 6:** All Documents sufficient to Identify any third part(ies) from or through whom  
 10 You obtained Lead Information regarding the Plaintiff including Your complete contract or other  
 11 arrangement or agreement with any such third part(ies).

12 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 13 is not in possession of documents that may be responsive to this Request.

14           The objections that apply to this continue as follows:

15           TMS objects to this Request as argumentative to the extent the Request purports to assume  
 16 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to  
 17 the extent it calls for a legal conclusion and speculation. TMS further objects to the phrase  
 18 “sufficient to Identify” as vague and ambiguous. TMS further objects to this Request and its  
 19 inclusion of “All Documents” as overly broad and unduly burdensome on its face. TMS further  
 20 objects to the definition of the term “You” as set forth in General Objection C, *supra*. TMS further  
 21 objects to the capitalized term “Lead Information” as vague and ambiguous, particularly where, as  
 22 here, the capitalized term is not defined by the Requests. Instead, TMS interprets “Lead  
 23 Information” to mean “contact information” in a good faith attempt to respond to this Request.

24

25 **REQUEST NO. 7:** All Documents sufficient to Identify any third part(ies) from or through whom  
 26 You obtained Lead Information regarding any Person besides the Plaintiff who You (or any third  
 27 party acting on Your behalf of For Your benefit) caused to be called on the Person’s cellphone for

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DEFENDANT’S SUPPLEMENTAL RESPONSES AND OBJECTIONS TO FIRST SET OF  
 REQUESTS FOR PRODUCTION

1 the same purpose for which Plaintiff was called using the same Dialing Equipment that was used  
 2 to call the Plaintiff.

3 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 4 is not in possession of documents that may be responsive to this Request.

5 The objections that apply to this continue as follows:

6 TMS objects to this Request as argumentative to the extent the Request purports to assume  
 7 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to  
 8 the extent it calls for a legal conclusion and speculation. TMS further objects to the phrase  
 9 “sufficient to Identify” as vague and ambiguous. TMS further objects to this Request and its  
 10 inclusion of “All Documents” as overly broad and unduly burdensome on its face. TMS further  
 11 objects to the respective definitions of the terms “Dialing Equipment” and “You” as set forth in  
 12 General Objections B & C, *supra*. TMS further objects to the capitalized term “Lead Information”  
 13 as vague and ambiguous, particularly where, as here, the capitalized term is not defined by the  
 14 Requests. Instead, TMS interprets “Lead Information” to mean “contact information” in a good  
 15 faith attempt to respond to this Request.

16

17 **REQUEST NO. 8:** All emails exchanged between You and any lead source, or between You and  
 18 any other third person, from or through whom You obtained Lead Information regarding Plaintiff  
 19 or any other Person who You called for the same purpose for which Plaintiff was called using the  
 20 same Dialing Equipment that was used to call the Plaintiff.

21 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 22 is not in possession of documents that may be responsive to this Request.

23 The objections that apply to this Request continue as follows:

24 TMS objects to this Request as argumentative to the extent the Request purports to assume  
 25 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to  
 26 the extent it calls for a legal conclusion and speculation. TMS further objects to the respective  
 27 definitions of the terms “Dialing Equipment” and “You” as set forth in General Objections B &

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1 C, *supra*. TMS further objects to the capitalized term “Lead Information” as vague and ambiguous,  
 2 particularly where, as here, the capitalized term is not defined by the Requests. Instead, TMS  
 3 interprets “Lead Information” to mean “contact information” in a good faith attempt to respond to  
 4 this Request.

5

6 **REQUEST NO. 9:** All Documents sufficient to Identify the Dialing Equipment that was used to  
 7 make any call(s) to Plaintiff.

8 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 9 did not place the alleged telephone calls to Plaintiff at issue in the Complaint. Plaintiff does not  
 10 allege but merely advises TMS of Plaintiff’s belief that a non-party named Triumph placed the  
 11 alleged telephone calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS. As  
 12 such, TMS attempted to contact Triumph to seek to ascertain whether Triumph placed the alleged  
 13 telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and  
 14 documentation surrounding such alleged telephone calls. Triumph has not responded to TMS.  
 15 Accordingly, TMS is not in possession of documents that may be responsive to this Request at this  
 16 time.

17 The objections that apply to this Request continue as follows:

18 TMS objects to this Request as argumentative to the extent the Request purports to assume  
 19 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to  
 20 the extent it calls for speculation. TMS further objects to the phrase “sufficient to Identify” as  
 21 vague and ambiguous. TMS further objects to the definition of the term “Dialing Equipment” as  
 22 set forth in General Objection B, *supra*.

23

24 **REQUEST NO. 10:** All Documents sufficient to Identify the purpose of all calls that were made  
 25 to Plaintiff.

26 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 27 did not place the alleged telephone calls to Plaintiff at issue in the Complaint. Plaintiff does not

1 for purposes of this action. To the extent TMS responds to this Request, TMS will only produce  
 2 documents in its possession, if any, concerning the purported, but unalleged, activity of Triumph.  
 3 TMS further objects to the phrase “sufficient to Identify” and the term “coding” as vague and  
 4 ambiguous. TMS further objects to this Request and its inclusion of “All Documents” as overly  
 5 broad and unduly burdensome on its face. TMS further objects to the definition of the term “You”  
 6 as set forth in General Objection C, *supra*. TMS further objects to this Request to the extent it  
 7 seeks to intrude upon the attorney-client communications privilege and the attorney work-product  
 8 doctrine.

9

10 **REQUEST NO. 18:** All Documents sufficient to Identify any Persons who You caused (or a third  
 11 party acting on Your behalf or for Your benefit caused) to be called after the persons had requested  
 12 to no longer receive such calls, including all Documents sufficient to Identify the number of calls  
 13 made to each such person after their do not call request and the dates of all such calls.

14 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 15 does not place telemarketing calls as assumed by this Request. Notwithstanding the foregoing and  
 16 in light of Plaintiff’s unalleged belief that a non-party named Triumph placed the alleged telephone  
 17 calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS, as such, TMS attempted  
 18 to contact Triumph to seek to ascertain whether Triumph placed the alleged telephone calls to  
 19 Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and documentation  
 20 surrounding such alleged telephone calls. Triumph has not responded to TMS. Accordingly, TMS  
 21 is not in possession of documents that may be responsive to this Request at this time.

22       The objections that apply to this Request continue as follows:

23       TMS objects to this Request as argumentative to the extent the Request purports to assume  
 24 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request as  
 25 irrelevant, not proportional to the needs of the case, overbroad, and unduly burdensome in that it  
 26 is not limited in scope or refined to the issues framed by the pleadings. To the extent TMS responds  
 27 to this Request, TMS will only provide documents concerning the purported, but unalleged,

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1 activity of Triumph. TMS further objects to the phrase “sufficient to Identify” as  
 2 vague and ambiguous. TMS further objects to this Request and its inclusion of “All Documents”  
 3 as overly broad and unduly burdensome on its face. TMS further objects to this Request to the  
 4 extent it calls for a legal conclusion and speculation. TMS further objects to the definition of the  
 5 term “You” as set forth more fully in General Objection C, *supra*.

6

7 **REQUEST NO. 19:** All Documents sufficient to Identify any training of Your personnel in the  
 8 existence and use of any Internal Do Not Call List or related procedures that You have caused to  
 9 be maintained.

10 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 11 does not place telemarketing calls as assumed by this Request. Notwithstanding the foregoing and  
 12 in light of Plaintiff’s unalleged belief that a non-party named Triumph placed the alleged telephone  
 13 calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS, as such, TMS attempted  
 14 to contact Triumph to seek to ascertain whether Triumph placed the alleged telephone calls to  
 15 Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and documentation  
 16 surrounding such alleged telephone calls. Triumph has not responded to TMS. Accordingly, TMS  
 17 is not in possession of documents that may be responsive to this Request at this time.

18       The objections that apply to this Request continue as follows:

19       TMS objects to this Request as argumentative to the extent the Request purports to assume  
 20 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request as  
 21 irrelevant and overbroad in that it is not limited in scope. Specifically, Plaintiff contends a non-  
 22 party named Triumph, and not TMS, placed the telephone calls to Plaintiff at issue in the  
 23 Complaint. Thus, the policies of TMS as it relates to “Internal Do Not Call Lists” are not relevant  
 24 for purposes of this action. To the extent TMS responds to this Request, TMS will only produce  
 25 documents in its possession, if any, concerning the purported, but unalleged, activity of Triumph.  
 26 TMS further objects to the phrases “sufficient to Identify” and “related procedures” as vague and  
 27 ambiguous. TMS further objects to this Request and its inclusion of “All Documents” as overly

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1 broad and unduly burdensome on its face. TMS further objects to the definition of the term “You”  
 2 as set forth in General Objection C, *supra*. TMS further objects to this Request to the extent it  
 3 seeks to intrude upon the attorney-client communications privilege and the attorney work-product  
 4 doctrine.

5

6 **REQUEST NO. 21:** All Documents sufficient to Identify any Persons whose phone numbers  
 7 were registered on the National Do Not Call Registry for at least thirty (30) days who You caused  
 8 (or a third party acting on Your behalf or for Your benefit caused) to be called at least twice in any  
 9 12-month period.

10 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 11 does not place telemarketing calls as assumed by this Request. Notwithstanding the foregoing and  
 12 in light of Plaintiff’s unalleged belief that a non-party named Triumph placed the alleged telephone  
 13 calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS, as such, TMS attempted  
 14 to contact Triumph to seek to ascertain whether Triumph placed the alleged telephone calls to  
 15 Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and documentation  
 16 surrounding such alleged telephone calls, including its calling records. Triumph has not responded  
 17 to TMS. Accordingly, TMS is not in possession of documents responsive to this Request at this  
 18 time.

19       The objections that apply to this Request continue as follows:

20       TMS objects to this Request as argumentative to the extent the Request purports to assume  
 21 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request as  
 22 irrelevant, not proportional to the needs of the case, overbroad, and unduly burdensome in that it  
 23 is not limited in scope or refined to the issues framed by the pleadings. To the extent TMS responds  
 24 to this Request, TMS will only provide documents concerning the purported, but unalleged,  
 25 activity of Triumph. TMS further objects to this Request to the extent it calls for a legal conclusion  
 26 and speculation. TMS further objects to the phrase “sufficient to Identify” as vague and  
 27 ambiguous. TMS further objects to this Request and its inclusion of “All Documents” as overly

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1 broad and unduly burdensome on its face. TMS further objects to the definition of the term “You”  
 2 as set forth in General Objection C, *supra*.

3

4 **REQUEST NO. 25:** All contracts or written understandings between You and Triumph Merchant  
 5 Solutions.

6 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 7 will produce documents that may be responsive to this Request.

8       The objections that apply to this Request continue as follows:

9           TMS further objects to the phrase “written understandings” as vague and ambiguous. TMS  
 10 further objects to the definition of the term “You” as set forth in General Objection C, *supra*.

11

12 **REQUEST NO. 26:** All Communications between You and Triumph Merchant Solutions  
 13 regarding the placement of telemarketing calls on Your behalf or for Your benefit.

14 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 15 will produce documents that may be responsive to this Request.

16       TMS objects to this Request as argumentative to the extent the Request purports to assume  
 17 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to  
 18 the extent it calls for a legal conclusion and speculation. TMS further objects to this Request and  
 19 its inclusion of “All Communications” as overly broad and unduly burdensome on its face. TMS  
 20 further objects to the respective definitions of the term “You” as set forth in General Objection C,  
 21 *supra*.

22

23 **REQUEST NO. 27:** All Communications between You and Triumph Merchant Solutions  
 24 regarding Your Internal Do Not Call List.

25 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the following objections, TMS  
 26 directs Plaintiff to Supplemental Response No. 26.

27

      The objections that apply to this Request continue as follows:

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